

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

KELLY PRICE,

Plaintiff,

-v.-

THE CITY OF NEW YORK, *et al.*,

Defendants.

15 Civ. 5871 (KPF)

**ORDER**

KATHERINE POLK FAILLA, District Judge:

On September 17, 2021, the Court held a conference addressing Plaintiff Kelly Price's claim that members of the District Attorney of New York's Office (the "DANY Defendants") had deleted files from two cell phones that she turned over to them during a proffer in 2011. (See Minute Entry for September 17, 2021). During the conference, the DANY Defendants stated that there was no evidence that they had accessed or altered the contents of Plaintiff's phones. The DANY Defendants further stated that they could not comment on Plaintiff's claim that forensic analyses of her phones demonstrated that the DANY Defendants had in fact accessed the phones until they were provided copies of the full analyses. At the conclusion of the conference, the Court directed Plaintiff to provide to the Court and the DANY Defendants: (i) copies of the forensic analyses and (ii) contact information for someone at the organization that performed the analyses. Plaintiff has since provided both the analyses and contact information via email to the Court and the DANY Defendants.

Based on its review of the materials provided by Plaintiff and the representations made by the DANY Defendants at the September 17, 2021

conference, the Court continues to be concerned that the DANY Defendants have not adequately addressed Plaintiff's allegations. The DANY Defendants have neither explained how they came to possess a screenshot of Plaintiff's text messages with her then-partner Raheem Powell nor spoken to the significance of Plaintiff's forensic analyses (see Dkt. #183, Ex. E). The Court finds that it is necessary to hear from the DANY Defendants on these two unaddressed issues before it determines the appropriate next steps in this case.

Accordingly, the Court orders the DANY Defendants to take the following actions on or before **January 10, 2022**. *First*, the DANY Defendants shall perform a keyword search of former-Assistant District Attorney Kenya Wells's emails for messages related to Plaintiff's cellphones. The search shall be limited to emails that Mr. Wells sent or received between May and July 2011, and shall use at least the following keywords: (i) the case number associated with Plaintiff's 2011 proffer; (ii) Kelly Price; and (iii) Raheem Powell. The DANY Defendants shall submit a letter summarizing the findings of the keyword search and provide copies of any responsive emails. *Second*, the DANY Defendants shall address in the letter described above the significance of the forensic analyses of Plaintiff's phones and state whether the DANY Defendants agree or disagree with Plaintiff's characterization of the analyses. *Third*, the DANY Defendants shall provide a copy of the application that Mr. Wells drafted, but did not submit, for a warrant authorizing the search of Plaintiff's phones.

The DANY Defendants shall endeavor to file the materials described above on the public docket. To the extent that certain materials, such as Mr.

Wells's emails or the draft search warrant application, implicate the attorney-client privilege or contain other sensitive information, the DANY Defendants may email such materials *in camera* to the Court's chambers email address, Failla\_NYSDChambers@nysd.uscourts.gov, and may redact quotations or specific references to the materials from their publicly-filed submissions.

Defendant New York City shall transmit a copy of this Order to counsel for the DANY Defendants. The Court will provide a copy of this Order via email to Plaintiff.

SO ORDERED.

Dated: November 3, 2021  
New York, New York

A handwritten signature in blue ink, reading "Katherine Polk Failla".

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KATHERINE POLK FAILLA  
United States District Judge